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Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Local Competition and Broadband Reporting

CC Docket No. 99-301

COMMENTS OF HUGHES NETWORK SYSTEMS

March 19, 2001

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COMMENTS OF HUGHES NETWORK SYSTEMS

Hughes Network Systems (“HNS”), a division of Hughes Electronics Corporation, hereby comments on the Second Notice of Proposed Rulemaking in the above-referenced proceeding.¹ In this NPRM, the Commission seeks comments on whether it might be useful to, and how it might, refine or improve its methods of gathering data on the degree of deployment of broadband services and the development of local competition. HNS has submitted data to the Commission on the Local Competition and Broadband Reporting Form (Form 477) during all three of the reporting periods in which it has been required to do so, and has significant concerns about the Commission’s current proposals to expand its data gathering efforts. The current reporting requirements provide the Commission with more than adequate data to understand the policy considerations regarding the availability of broadband services across the country. Any expansion of these requirements would add very little useful information, but would compromise commercially sensitive information in a manner that might negatively impact the competitive development of the broadband market.

¹ *Second Notice of Proposed Rulemaking, In the Matter of Local Competition and Broadband Reporting*, CC Docket No. 99-301, FCC 1-19 (rel. January 19, 2001) (“NPRM”).

Although Commission has stated that it does not wish to unduly burden providers of broadband services with reporting requirements, the proposed changes to Form 477 in the current NPRM would significantly increase the burden on providers and require them to report on information that is not readily available from their existing records – if such information can be collected at all. Even more significantly, perhaps, the additional burden on providers would not result in a marked increase in information that would be useful to the Commission or enable it to better satisfy its obligation to encourage the deployment of advanced telecommunications capability to all Americans, as required under section 706 of the 1996 Act.² Indeed, implementation of the proposed changes would have quite the contrary result: requiring providers to submit even more proprietary information on actual subscribers allocated by category and geographic location, while reducing the level of confidentiality of such information, would actually distort the deployment of broadband services by affecting the competitive development of the market. It even may delay deployment in certain areas, most particularly in the underserved areas in which the Commission and Congress are most eager to ensure deployment.

Rather than expanding the scope of the data collection, therefore, the Commission should maintain its current reporting requirements, which are satisfactory to provide an understanding of the policy considerations underlying the deployment of broadband services across the country. However, the Commission should streamline the reporting process by eliminating the need to file a separate Form 477 for each state, and use instead a single form that can be filed electronically. In addition, the Commission should reduce the frequency of the report to annually, rather than semi-annually. Such changes would minimize the burden on

² See Pub. Law No. 104-104, Title VII, § 706.

providers while still providing the Commission with sufficient information to fulfill its duties under Section 706 of the 1996 Act. HNS's comments on specific proposals contained in the NPRM are given below.

1. Reporting Data by Zip Code/Customer Category

The current Form 477 requires providers to distinguish between (1) residential/small business users and (2) large business/institutional users. The current form also requires actual counts of subscribers on the state level, and a list of zip codes (without counts) where broadband services are deployed. In the NPRM, the Commission proposes to alter Form 477 in order to attempt to capture distinctions between the deployment of broadband services to residential and business users, by using three categories of users: (1) residential users, (2) small business users, and (3) large business/institutional users. In addition, it proposes requiring that providers report the actual subscribership by zip code and to further break down – by zip code – residential subscribership, the type of technology used to provide broadband services, and whether service is one- or two-way.

Information regarding subscribership numbers and patterns of deployment is proprietary information. The current level of information required in the existing Form 477 already raises substantial concerns for HNS and other providers over the potential for competitive harm. Requiring even more detailed information about both the types and locations of customers, as well as the type of services with which they are provided, will make it possible for competitors to cream-skim and much more easily target the prime markets for broadband services. This not only would distort competition, but also would be likely to have the undesired side effect of hampering broadband deployment in certain areas that could be seen by providers as less attractive in which to do business. The consumers most adversely affected by such

market distortions are likely to be those who are already underserved and to whom the Commission is most eager to promote deployment.

Furthermore, the Commission's proposal to require providers to further breakdown their subscribership numbers into more detailed categories is unlikely to result in reliable information. HNS does not collect information that would allow it to classify customers by the FCC's proposed categories, but rather keeps track of customers by product classification (*i.e.*, DirecWay, one-way DirecPC, two-way DirecPC, and various personal earth station services). These classifications only very roughly correspond to the two categories used in the current Form 477 (residential/small business vs. large business/institutional). However, attempting to use these product classifications for FCC reporting purposes is inherently imprecise, as home office or small business customers may use any one of the number of product offerings, and medium-sized business customers may order services normally associated with large businesses in anticipation of future growth. HNS does not at this time have the capability of further distinguishing between types of customers, and any attempt to divide the current residential/small business classification into two separate categories would result in an arbitrary line-drawing that would be essentially meaningless for data analysis. The only way that HNS could respond in a meaningful fashion to a more detailed customer classification requirement would be to ask customers to complete detailed customer profiles in an attempt to place each customer in the appropriate category. Any such attempt, however, would clearly impose significant additional burdens on both HNS and its customers – and customers may not comply with such a request for detailed information. In addition, other providers would very likely face similar challenges in categorizing customers, and it is unlikely that there would be consistency in

the way various providers dealt with these difficulties. As a result, any resulting data submitted could be very misleading.

Because the potential for additional insights into the deployment of broadband services is outweighed by the potential for competitive harm, market distortions, and inaccurate numbers, as well as the burden on broadband providers and consumers, HNS strongly urges the Commission to refrain from altering its current zip code and customer category requirements.

2. Data on Availability of Service

The NPRM also seeks comments on various measures of availability.³ None of the measures proposed in the NPRM,⁴ however, is appropriate for satellite-delivered broadband services such as those provided by HNS. Unlike other broadband technologies, providers of satellite-delivered broadband services are able to provide services within a nationwide footprint. HNS currently offers services throughout the United States, and serves customers in the continental United States, Alaska, Hawaii, and U.S. territories. It would be meaningless to list the number of “homes passed” to gauge availability of satellite-delivered broadband services, therefore, as nearly every location in the United States is “passed” by such services. Nor could any satellite provider actually deliver service to every home or business in the country, as each provider is limited by its transponder capacity and each site has unique line-of-sight access capabilities. Any attempt to allocate capacity by state, as required by the state-by-state nature of Form 477, would be completely arbitrary given the nationwide scope of satellite services. For

³ NPRM at ¶ 20.

⁴ Proposed measure include: (1) number of homes passed by broadband-capable infrastructure, (2) zip codes where service is currently offered, (3) for providers of telephone or cable video services, the number of their customers that now have broadband services available to them, or (4) any other measure. *Id.*

these reasons, data on availability of broadband services should not be required for providers of satellite-delivered services.

3. Data on Underserved Populations

The NPRM seeks comment on whether there are alternative sources of information on the availability of, demand for, or subscribership to, broadband services for certain discrete populations and demographic groups whom the Commission has identified as particularly vulnerable to not receiving timely access to broadband services.⁵ HNS notes that, with very few exceptions, census tract data will not provide a meaningful indication of the availability to these identified groups. For example, there are high-income individuals who reside in rural areas, and low-income individuals in urban areas. In addition, the current census includes 63 different racial/ethnic categories. It is therefore questionable how this data could be used to form coherent policy prescriptions.

4. Data on Private Networks

The NPRM also seeks comment on whether to collect information on high-speed data services that are used in private networks (*i.e.*, “private lines”).⁶ According to the NPRM, data on these broadband lines were excluded from the initial Form 477 filings because private line networks are not relatively new and are easily obtainable for large business customers, and because the Commission concluded it would be difficult for providers to report accurate and comparable line counts for these services. These rationales for not collecting information on private lines remain sound and the FCC should continue to exclude private lines from its data gathering efforts.

⁵ NPRM at ¶ 21.

⁶ NPRM at ¶ 22.

Comment is also sought on whether the FCC should collect information on private lines that deliver an information carrying capacity in excess of 200 kbps but that do not connect end users to the Internet or other public data networks.⁷ HNS would be unable to provide such information to the Commission, as HNS currently has no way to ascertain precisely how its customers utilize the broadband capacity with which HNS provides them. Furthermore, it is not clear how information on private lines would further the policy goals stated in the NPRM.

5. Confidentiality

The current Form 477 provides respondents with a streamlined method for requesting confidentiality of the data submitted. Through this NPRM, the Commission seeks to establish a rebuttable presumption that some or all of the data in Form 477 does not typically meet its standards for competitively sensitive information.⁸ HNS remains extremely concerned about the confidentiality of any proprietary business data that it is required to submit under the Commission's Form 477 reporting requirement, and refers the Commission to its outstanding Petition for Declaratory Ruling on this issue.⁹ In this Petition for Declaratory Ruling, HNS has asked the Commission to clarify how it will meet its commitment to ensure the confidentiality of proprietary information in cases where data is submitted with respect to only a limited number of service providers in a specific category and/or a specific type of service as indicated on Form 477 and, specifically, how it intended to aggregate the information submitted to ensure that any single provider's data could not be obtained by competitors. HNS's existing concerns are

⁷ *Id.*

⁸ NPRM at ¶ 26.

exacerbated by the Commission's current proposal to establish a rebuttable presumption against confidentiality and believes any such presumption would certainly undermine companies' willingness to respond to data requests fully and promptly, with a minimum of procedural challenges.

6. Analyses of Data

The NPRM seeks comment on whether the Commission should alter the manner in which the collected data is analyzed and whether, and to what degree, it should make this data available for outside review.¹⁰ Confidentiality concerns, as discussed above, make any analysis by outside parties problematic. Non-disclosure requests and aggregation of data are absolutely essential to protect the confidentiality of respondents' proprietary information. Furthermore, the Commission's proposal to incorporate outside analyses or comments into its final Section 706 report raises the question of which parties' analyses would be included and the impact of these analyses on any resulting policy proposals. Because of these concerns, the Commission should rely only on the data that it has collected and the analysis that its own staff has produced.

7. Reporting Burden and Frequency

Even in their current form, the broadband reporting requirements mandated by the Commission are a costly and time-consuming exercise. HNS is strongly opposed to any expansion of these reporting requirements. While the Commission has stated that it seeks to limit its data collection to "data that providers routinely keep in the ordinary course of business

⁹ Hughes Network Systems, *Petition for Declaratory Ruling, In the Matter of Local Carrier and Broadband Reporting*, CC Docket No. 99-301 (filed May 15, 2000) (copy attached).

¹⁰ NPRM at ¶ 29.

or that is easily derived from their records,”¹¹ nearly every proposal the Commission has made in the NPRM seeks to expand the scope of data collected beyond that which is normally kept or which can be easily derived from existing customer records. Expansion of the reporting requirements to require any additional level of detail would require HNS to make major changes in its current customer databases and data collection efforts. For example, in order to provide the data that the NPRM proposes be included in the Form 477, HNS would have to add data fields in its databases on user types (*i.e.*, residential, small business, large business), racial classification, income level, and private network usage. In addition, because HNS’s activation process is fully automated, adding these additional fields would require modification of the HNS’s auto-commissioning sub-system. However, because HNS’s experience indicates that customers are generally unwilling to provide information beyond basic location and billing information, it is not at all clear that any additional data would be obtained (or would be accurate), even if HNS were to reprogram its systems to add these additional fields.

Because of the significant burden that the Form 477 filing requirement – even in its current form – imposes on providers, the Commission should streamline the process. The Commission should replace the requirement that respondents file a separate form for each state with a single master spreadsheet that could be filed with the Commission electronically rather than submitted on diskette. This would reduce errors by eliminating tedious, manual input and submission, and result in better data. In addition, regardless of the data submitted or the number of forms required, an annual filing requirement would better balance the Commission’s need to obtain timely information about the broadband market with the burdens imposed on filers.¹²

¹¹ NPRM at ¶ 11.

¹² NPRM at ¶ 28.

Although the broadband market is clearly in a state of rapid growth, sufficiently accurate data may still be obtained by reducing the frequency of the required data submissions to match the frequency of the publication of the Commission's annual reports.

* * *

HNS strongly urges the Commission not to expand its data gathering effort as proposed in the NPRM. The additional reporting requirements proposed would be a significant burden on both providers of broadband services and broadband customers. This burden is unjustified, as the additional requirements would not result in a substantial increase in useful information. Furthermore, the proposed changes could potentially have a negative impact on the broadband market and delay the deployment of broadband services – especially to underserved consumers. These changes would require providers to submit even more proprietary information, while at the same time reducing the level of confidentiality of such information. Rather than expanding the Form 477 data-gathering efforts, HNS suggests that the Commission take steps to make the filing requirement more accurate and less burdensome by substituting a single master form for the current state-by-state filing requirement and by reducing the frequency of the filings to annually.

Respectfully submitted,

HUGHES NETWORK SYSTEMS

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